

Packaging, edited by M.L. Rooney ("Rooney"), and in further view of the alleged admitted state of the art. Applicants respectfully traverse the rejection.

The applied references, separately or combined, fail to teach or suggest an oil-in-water type emulsified food that "has a dissolved oxygen concentration of 0.8-8.1% O₂ immediately after manufacturing" as required by claims 1 and 5. The Office Action acknowledges that the applied references do not disclose "a dissolved oxygen concentration of 0.8-8.1% O₂ immediately after manufacturing." See page 4.

At most, the applied references suggest decreasing an oxygen concentration to approach 0% O₂ because oil-in-water emulsified foods are subject to oxidization by any dissolved oxygen present. For example, Yamauchi discloses storing a mayonnaise base "in an oxygen-free container" by filling the empty space of each container with nitrogen. See Abstract; col. 4, lines 49-55. Shunsuke discloses a nitrogen purge of a head space inside a container filled with mayonnaise prior to sealing a container in order to protect the flavor from degrading. See paragraphs [0003] and [0025]. Toru discloses an oil-in-water emulsified condiment having preferably all air bubbles replaced with nitrogen bubbles to maintain flavor. See paragraph [0007]. Mooney, as a whole, generally discloses removing oxygen within food packaging. Thus, the applied references only generally suggest removing all oxygen within a container to protect flavor and prevent spoilage.

In contrast and unexpectedly, the Applicants discovered that oil-in-water emulsified food products need to have "a dissolved oxygen concentration of 0.8-8.1% O₂ immediately after manufacturing" to exhibit a superior balance of flavors and to better prevent flavor degradation of the product during storage. The specification explains that if the dissolved oxygen concentration of O₂ "is less than 0.8%, a strong pungent irritating smell of vinegar can be noted and the balance of flavors of the edible oils and fats, vinegar and egg yolk is degraded." See the specification at page 16, lines 18-22. "On the other hand, if the dissolved

oxygen concentration exceeds 8.1% O₂, there is no significant difference between the taste immediately after manufacturing and that of the conventional oil-in-water type emulsified food that was not subjected to deoxygenation," but significant taste degradation is detected after a period of storage. See the specification at page 16, line 24-page 17, line 6.

Among the benefits obtained by the claimed product are: (1) greater prevention of excess oxidation; (2) greater avoidance of quality degradation; and (3) better flavor balance than a similar emulsified food with a dissolved oxygen concentration outside that range. See the specification at page 4, line 13-page 5, line 5, page 16, line 18-page 17, line 6. The specification provides evidence of these taste benefits at the discussion of Test Example 1, beginning at page 28, line 23, and the discussion of Test Example 2, beginning at page 30, line 12. Table 3 at page 30 and Table 4 at page 32 summarize the results of Test Example 1 and Test Example 2, respectively.

Specifically, Table 3 shows that salad dressing product Samples b, c, and d with dissolved oxygen concentrations of 0.8 to 8.1% O₂ immediately after manufacturing (0.5 to 6.2 % O₂ after storing in a dark place for 10 days at a temperature of 20°C) had unexpected taste benefits immediately after the Samples were manufactured and/or after storage as compared to Samples a and e that had dissolved oxygen concentrations outside of this range. Table 4 shows similar results with mayonnaise product Samples A-E.

Accordingly, the taste and storage benefits that result from an oil-in-water type emulsified food that has "a dissolved oxygen concentration of 0.8-8.1% O₂ immediately after manufacturing" are completely unexpected in view of the above-described teachings of the applied references. In line with the suggestions of the prior art, the specification describes that "[i]ntially, the inventors assume[d] that if the dissolved oxygen present in oil-in-water emulsified foods is completely removed, then the oxidation of edible oils and fats and various spices and seasoning components can be prevented and container-packed, oil-in-water type

emulsified food products that have excellent taste can be produced. However, the results of the study demonstrated that excessively removing the dissolved oxygen present in the oil-in-water type emulsified [food,] surprisingly adversely affects the taste." See page 3, line 23- page 4, line 7.

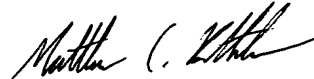
In evaluating obviousness, it is not whether a person of ordinary skill in the art is capable of imparting the claimed dissolved oxygen concentration range to an oil-in-water emulsified food, but whether a reason can be clearly articulated for doing so. See MPEP §2142 ("The key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious."). Certainly, the applied references are silent with respect to the claimed range. Furthermore, the Office Action fails to provide a reason or rationale found in the applied references or in the knowledge generally available in the art at the time of the invention that would have led one of skill in the art to the claimed range. Rather, as discussed above, the combined teachings of the applied references teach away from the claimed dissolved oxygen concentration range because the applied references teach or at least suggest that the optimal amount of O₂ in such food products is 0%.

Thus, the applied references, separately or combined, would not have rendered obvious claims 1 and 5. Claims 2-4 and 6 depend from claims 1 and 5, respectively, and, thus, also would not have been rendered obvious by the applied references for at least the same reasons. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:
Petition for Extension of Time

Date: December 1, 2008

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